

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
Southern Division

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U.S. BANKRUPTCY COURT  
N.D. OF ALABAMA

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No.  
Chapter 11

**02 02771**

**MOTION TO APPROVE NOTICE PROCEDURES  
FOR INDIVIDUAL ASBESTOS CLAIMANTS**

Shook & Fletcher Insulation Co., the debtor and debtor-in-possession in this case ("Shook" or the "Debtor"), by counsel, hereby requests entry of an order approving the Debtor's proposed notice procedures for Individual Asbestos Claimants (as defined below), and respectfully represents:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is 11 U.S.C. § 105(a) and Federal Rules of Bankruptcy Procedure 2002(g), 2002(m) and 9007 (the "Bankruptcy Rules").

**BACKGROUND**

3. On April 8, 2002 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

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4. The Debtor incorporates by reference as if fully set forth herein the Declaration of Wayne W. Killion, Jr. in Support of Voluntary Petition and First Day Motions (the "Killion Declaration") filed with the Court on the Petition Date.

#### **SHOOK'S ASBESTOS-RELATED CREDITORS**

5. Shook has received thousands of claims from individuals asserting damages for bodily injuries alleged to result from exposure to asbestos and asbestos-related products (collectively, "Individual Asbestos Claimants"). Shook presently has over 60,000 such claims pending and has over 20,000 additional such claims that have been settled by or on behalf of Shook but as to which Shook has not paid the full settlement amount. The Plan includes such individuals in the definition of "Asbestos Claimants" holding "Asbestos Claims."

6. Under the Bankruptcy Code and Bankruptcy Rules, absent further order of the Court, each of these over 80,000 Individual Asbestos Claimants, as well as other creditors and parties-in-interest, would be entitled to certain notices, including notices under Bankruptcy Rules 2002. The potential costs associated with copying and mailing or otherwise serving notices and motions to the entire creditor body, including Individual Asbestos Claimants, would impose an undue and expensive administrative and economic burden on the Debtor's estate.

7. While most of the Individual Asbestos Claimants have filed suit against Shook, other such claims have been asserted against Shook by counsel through demands or notices under settlement agreements with groups of Asbestos Claimants. Shook's asbestos-related litigation, as well as the group settlement agreements, were coordinated on behalf of a large group of co-defendants, including Shook and other parties, through the Center for Claims Resolution, Inc. (the "CCR"). Because much of the data, if available at all, is with the CCR and the CCR has ceased operations, the Debtor does not have complete information concerning each and every

Individual Asbestos Claimant that has asserted a claim or filed suit against it. In particular, due to the manner in which such claims were handled by the CCR and its designated network of defense counsel, the Debtor does not have, and cannot reasonably obtain, the addresses and other identifying information for each Individual Asbestos Claimant. The Debtor's records reflect only counsel of record for many of the Individual Asbestos Claimants, and all communication regarding such Asbestos Claimants and their various pending lawsuits has been through and with such counsel of record.

### **RELIEF REQUESTED AND GROUNDS THEREFOR**

8. Accordingly, by this Motion, the Debtor seeks this Court's approval to include on the Master Mailing List, and to send all notices, mailings and other communications related to the Chapter 11 case designated for service upon all creditors, to counsel of record known to Shook to represent one or more Individual Asbestos Claimants, rather than notifying each Individual Asbestos Claimant directly. The Debtor does not seek to limit notice or service by this Motion to any persons other than Individual Asbestos Claimants.<sup>1</sup>

9. Bankruptcy Rule 9007 authorizes the Court to designate, if not otherwise specified, "the entities to whom, and the form and manner in which notice shall be given." Fed. R. Bankr. P. 9007. Bankruptcy Rule 2002(g) requires that notices to a creditor be addressed "as such entity or an authorized agent has directed in its last request filed in the particular case." Fed. R. Bankr. P. 2002(g).

10. In connection with the pre-petition solicitation of acceptances of its Plan, Debtor's counsel wrote to each of the over 300 law firms which the Debtor's records (and records

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<sup>1</sup> The Debtor will include on its Service List any Individual Asbestos Claimant (as well as any other party) who files a written request for notices pursuant to Bankruptcy Rule 2002, as set forth in the Debtor's Motion for Order Limiting Notice of Service of Pleadings to Designated Parties and Representatives, which was filed with the Court on the Petition Date.

obtained from CCR) reflect was an attorney of record for one or more Individual Asbestos Claimants. Debtor's counsel asked these attorneys of record to advise the Debtor of their clients' names (which Shook generally had) and addresses (which Shook did not have), so that Shook could provide notice to their clients directly. Shook indicated that, if it did not receive this information, it would send solicitation packages to Individual Asbestos Claimants in care of their counsel of record. Of the law firms which responded, only two asked that Shook send such information to their clients directly;<sup>2</sup> all other law firms responding indicated that solicitation packages should be delivered to them, not to their individual clients. Shook proposes to utilize the same notice procedures in this case – sending notices to over 150 attorneys of record only, not to over 80,000 Individual Asbestos Claimants.<sup>3</sup>

11. The Debtor believes that this proposed notice procedure represents a fair and appropriate process to provide the Individual Asbestos Claimants' counsel with all necessary notices and other communications in this case, balanced against the costs which would be incurred if it were the Debtor's administrative burden to send notices to over 80,000 individuals. Indeed, since the Debtor has little or no personal information concerning the Individual Asbestos Claimants, direct notice to such individuals is a practical impossibility. Moreover, the Debtor may publish relevant notices concerning the Chapter 11 case, as appropriate and subject to the Court's approval, in nationally and/or regionally circulated publications, to provide further notice to Asbestos Claimants.

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<sup>2</sup> Baron & Budd provided Shook with a list of 195 client names and addresses, and Thornton & Naumes provided Shook with 3 names and addresses.

<sup>3</sup> Shook proposes to utilize this procedure also with respect to clients of Baron & Budd and Thornton & Naumes in lieu of sending an additional 198 notices to the Individual Asbestos Claimants they represent.

12. Recent caselaw suggests that, when a debtor in a Chapter 11 reorganization proceeding is aware of counsel of record for tort claimants, Bankruptcy Rule 2002(g)<sup>4</sup> requires that notices be sent to such counsel of record. See In re The Grand Union Company, 204 B.R. 864 (Bankr. D. Del. 1997).

13. In Grand Union, the Court interpreted Fed. R. Bankr. P. 2002(g) as it relates to notice requirements for tort claimants where a Chapter 11 debtor (a) is aware of the existence of counsel of record for tort claimants, (b) has the contact information for such counsel of record, and (c) has communicated with such counsel prior to the petition date. Id. at 878. In that case, three individual tort claimants filed late claims against the debtor's estate after they received notice of the claims bar date. These creditors were represented by counsel prior to the petition date. The debtor was aware of such representation, knew the names and addresses of the attorneys of record for these creditors, and had communicated with such counsel prior to the petition date. The debtor, however, sent notice of the claims bar date directly to the individual claimants and not to their counsel of record. The bankruptcy court faced the issue of whether:

[A] Chapter 11 reorganizing debtor has a duty to furnish the claimants' attorney with the bar date notice where [the debtor], prior to its commencement of the case, had specific knowledge of the claimants' representation in pursuing their personal injury claims against it and there had been a series of pre-petition communications between [the debtor's] agent and the claimants' attorneys exploring possible resolutions of the claims.

Id. at 870-71. The court in Grand Union held that failure to notify the claimants'

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<sup>4</sup> Fed. R. Bankr. P. 2002(g) provides:

All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule, whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.

attorneys of the bar-date notice violated the due process requirement of adequate notice, and that, “under the facts here, mailing of the bar date notice to a personal injury claimant whose exclusive representation by counsel is specifically known by the debtor is . . . inadequate.” Id. at 872.<sup>5</sup>

14. As in Grand Union, the Debtor here knows the names and addresses of counsel for the Individual Asbestos Claimants and, in many instances, has communicated with such counsel regarding the Individual Asbestos Claimants’ pending lawsuits and claims. Thus, the Debtor believes that the notice procedure it proposes is consistent with this case law as well as due process requirements for adequate notice.

15. Moreover, courts have allowed the debtor in recent asbestos-related bankruptcy proceedings not only to serve attorneys of record, which Grand Union requires, but also substantially to limit the service list to counsel or other representatives, in the interest of preserving the debtor’s estate. Notice procedures similar to that proposed by the Debtor here have been adopted by courts in other large Chapter 11 cases, including asbestos-related cases. See W.R. Grace & Co., No. 01-01139 (Bankr. D. Del. April 2, 2001); see also In re Armstrong World Indus., Inc., No. 00-04471 (Bankr. D. Del. 2001); see also In re Genesis Health Ventures,

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<sup>5</sup> The Court explained its rationale as follows:

The movants are lay-persons, and unlike commercial creditors, presumably had never been involved in a commercial bankruptcy proceeding. It is unreasonable to suggest that these movants, who presumably had never seen a bar date notice before, would fully appreciate the meaning and legal significance of the notice and react accordingly. It is equally unreasonable to expect that they would travel to the offices of [the debtor’s] counsel, check the schedules, see whether their claims are correctly listed, and determine what action, if any, needs to be followed.

Id. at 873.

No. 00-2692 (Bankr. D. Del. 2000); In re Sun Healthcare Group, Inc., No. 99-3657 (Bankr. D. Del. 1999).<sup>6</sup>

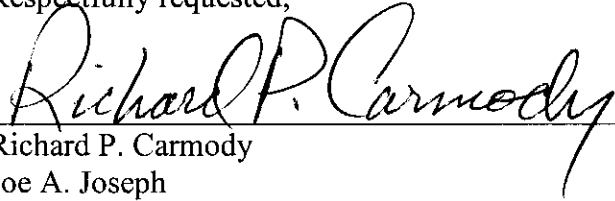
16. In accordance with both recent decisions and notice procedures approved in similar cases, the Debtor seeks authority to implement the notice procedures described in this Motion. The Debtor believes that this notice procedure will ensure adequate notice to and due process for the Individual Asbestos Claimants during the Chapter 11 Case, while facilitating (and reducing the cost of) the administration of this case. Limiting notice as requested herein will result in a significant cost savings to the Debtor, its estate and its creditors, and will not prejudice any creditor or party-in-interest.

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<sup>6</sup> A copy of the W.R. Grace order is attached hereto as Exhibit A.

WHEREFORE, the Debtor respectfully requests that this Court enter its order approving the notice procedures for Individual Asbestos Claimants described in this Motion, and granting such other and further relief as the Court deems appropriate.

Respectfully requested,

A handwritten signature in black ink that reads "Richard P. Carmody". The signature is written in a cursive style with a large, prominent "R" and "C".

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Proposed Attorneys for Shook & Fletcher  
Insulation Co., as Debtor and Debtor-in-Possession

Dated: April 8, 2002



**Exhibit A**

Copy of Order in:

W.R. Grace & Co.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
W. R. GRACE & CO., et al.<sup>1</sup> ) Case No. 01-01139 ( )  
) (Jointly Administered)  
)  
Debtors. )

**ORDER APPROVING LITIGATION CREDITOR NOTICE PROCEDURES**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking entry of an order approving the Litigation Creditor Notice Procedures<sup>2</sup>; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this

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<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc.), Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

<sup>2</sup> Capitalized terms not defined herein shall have the same meaning as in the Motion.

proceeding is a core proceeding pursuant to 28 U.S.C. § 157; and after due deliberation and cause appearing therefor, it is hereby

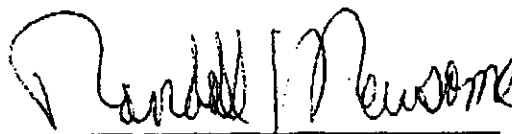
ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors are authorized to send all notices, mailings and other communications relating to the Chapter 11 Cases to counsel of record for the Alleged Litigation Creditors and the Debtors hereby are not required to send such notices, mailings or other communications directly to the individual Alleged Litigation Creditors; and it is further

ORDERED that the Litigation Creditor Notice Procedures constitute sufficient notice to these parties of all matters relating to the Chapter 11 Cases and are hereby approved; and it is further

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: April 2, 2001.

  
JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
Southern Division**

**In re:**

**SHOOK & FLETCHER INSULATION CO.**

**Debtor-in-Possession.**

**Case No. \_\_\_\_\_  
Chapter 11**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of April, 2002, I caused a copy of the foregoing Motion to Approve Notice Procedures for Individual Asbestos Claimants and proposed Order to be served upon the persons on the attached Service List in the manner indicated.

  
\_\_\_\_\_  
Richard P. Carmody

**Shook & Fletcher Insulation Co.  
Attachment to Certificate of Service**

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\* Parties designated with an asterisk were served by hand-delivery. All other parties were served by overnight mail.